

INDEPENDENT REVIEW PANEL

MIAMI-DADE POLICE DEPARTMENT

FTAA USE OF FORCE INTERIM DRAFT REPORT

Department Reviewed: Miami-Dade Police Department

Committee Meeting Dates February 24, 2004 and March 5, 2004.

Committee: IRP Members: Julia Dawson, Esq., Committee Chairperson, Moiez A. Tapia, Ph. D., Committee Co-Chairperson, Jorge E. Reynardus, Esq., and Chief John S. Ross. IRP Staff: Eduardo I. Diaz, Ph.D., Executive Director; Carol Boersma, Executive Assistant to the Director; Duhamelle Desire and Debbie Penha-Cumbermack, Conflict Resolution Specialists.

MDPD: Major Louis Battle, FTAA Operations Commander; Sergeant Michael Barry, FTAA Training; Major Tony Galindo, Tom Guilfoyle, Esq., Legal Bureau; Captain James O'Donnell and Lt. Jeff Schmidinger.

Audience: Juanda Ferguson; David Douglas; Nikki Hartman; Jessica Morris; Erick Morris; Noel Cleland; Naomi Fisher; Dr. Donna Schaper, Senior Pastor, Coral Gables Congregational Church; Carol Abia, City of Miami Civilian Investigative Panel (CIP); Ada Rojas and Sam Feldman, Miami Community Relations Board; Steven Wetstein, Amnesty International, Miami; Terry A. Coble, ACLU Greater Miami President Elect; Benjamin Waxman, Esq. and Marc Alain Steier, Esq., National Lawyers Guild; Naomi Archer, Save Our Civil Liberties; Terrance Rothman, Peace Worker of Luke 5 Movement; Raffio Stotlase, Ch. 4 Photographer; John Lang, NBC 6 Photographer; Carolyn Salazar, Miami Herald reporter; Jeffrey Keating, Free Speech TV reporter; Erik Bojnansky, Sun Post reporter.

The discussion focused on Police Use of Force during the Free Trade Area of the Americas (FTAA) Ministerial conference held in Miami. There was testimony concerning two incidents: Protest actions in downtown Miami on November 20, 2003 and protest actions around the jail on the afternoon of November 21. MDPD reported that they used non-lethal weapons only on November 21.

Downtown Thursday Morning

About 9 AM on November 20, 2004, a group of approximately 150 activists gathered at the security fence on Biscayne Boulevard at SE 1st Street and Flagler. Miami PD was monitoring the crowd. MDPD forces were positioned along NE 4th Street.

The MDPD Command Post was receiving information that the activists were hanging signs on the security fence and were going to set them on fire. Some activists threw fireworks; others began to attach ropes and grappling hooks to the security fence. At 9:45 AM Miami PD gave a “gas disperse order,” directing the crowd to move north. Within a few minutes Miami PD was deploying pepper spray and beanbags, and pushing the crowd north.

Amnesty International had a permit to hold a demonstration from 10 AM - 2 PM, at the Torch of Friendship (Bayfront Park at NE 3rd Street). About 10 AM a group of Hialeah officers, who said they were under the command of Captain Overton, approached the Torch and told the Amnesty group they had to move because a group of protesters was heading toward the Torch. At this time MDPD had a line of officers stationed at Biscayne and 4th Street, blocking access to the Torch from the north. Later the MDPD line moved to 3rd Street by request of Miami PD.

Why was the Amnesty International demonstration at the Torch of Friendship asked to disperse?

There is no evidence that Amnesty demonstrators were asked to disperse.

According to testimony provided by Hialeah Captain Overton on 5/20/04, Miami PD asked Hialeah to move from Bayside to Biscayne Blvd. Hialeah formed a skirmish line on the east side of Biscayne Blvd. between NE 3 and 4 Streets, to prevent protestors from moving into the Bayfront Park. This formation caused the Amnesty demonstration site (Torch of Friendship) to be behind the police line.

Major Battle stated that the City was dealing with demonstrators who had grappling hooks, rocks and bottles and were setting fires on the Boulevard. Major Battle advised MDPD officers that the crowd was being pushed toward MDPD’s area, so that MDPD officers would be prepared to ensure the Port remained open.

What permitted and scheduled protest activities did police deployment prevent or interfere with?

Mr. Wetstein’s complaint is that Amnesty International had scheduled a permitted demonstration at the Torch of Friendship and access to the demonstration was blocked by the deployment of the police forces. Mr. Wetstein stated MDPD set up a cordon on NE 4th St. and then moved the cordon to NE 3rd St., which prevented protestors from attending the Amnesty International demonstration at the Torch.

The operations log reveals that at 10:12 AM the City requested that MDPD move from 4th to 3rd Street. Whenever MDPD received information that Miami PD was battling a crowd, as was the case here, MDPD would shut down its area. Pedestrians and motorists would be let out of the area, but not into the area. Major Battle stated that Amnesty demonstrators could have come down 1st Avenue, 2nd Avenue or 3rd Street to get on the Boulevard.

What was the Tactical Plan to Address the Activists?

Major Battle said the Miami PD-MDPD tactical agreement was that Miami would push violent demonstrators north on the Boulevard to 3rd Street and then west. They did not want to push them down Flagler, 1st or 2nd because there are a lot of businesses in that area. MDPD would be the northern buffer on 4th St. In order to ensure the safety of everybody in the area, Major Battle set up a perimeter. Once the City regained control, MDPD moved back to the AAA Arena.

On 5/20/04 Hialeah Captain Overton testified that there were meetings with MPD and MDPD the night of November 19th, because there was intelligence information that an illegal demonstration could occur as early as 5 AM the following day. There were several contingency plans:

1. There was a plan that would have allowed for non-violent protesters to march along Biscayne Blvd and turn north at 3rd or 4th Streets.
2. There was a plan for the unpermitted protestors to be blocked between Biscayne Blvd. and 1st Ave., and taken into custody by Miami PD and other field forces.
3. There was a plan that, if protesters attacked the fence or committed other illegal acts, Hialeah would move to the amphitheater and MDPD would move south to 3rd St.

Dr. Diaz read the following from the Command Post Log:

9:41 Intel advises that when the city disperses that they will deploy gas.
9:41 Major Battle advises they have to give us warning so that we can mask up.
9:42 On northeast 4th and Boulevard, standing by.
9:42 We are advising Hialeah in Bayside.
9:43 Metromover now shut down.
9:44 Hialeah to deploy, moving crowd westbound.
9:45 City giving gas disperse order now.”
10:12 City req we move from 4th down to 3rd St.

What caused the demonstrators to move into Overtown?

The City of Miami After Action Report indicates that Miami PD considered “corralling” protesters to a parking lot to initiate mass arrests, but that didn’t happen. The report suggests “some people were slow to close folks off.”

Miami PD, with the help of BSO, pushed the crowd west to NE 2 Ave. and then north on 2nd Avenue. MDPD held a north lateral line on Third Street and locked down the Boulevard from NE 4 St. to NE 12 St. No traffic was allowed east of NE 2 Ave., Just past NE 2 Ave. and 6 St., a 45 degree line of MDPD officers blocked access north and east. As a result people were driven onto the railroad tracks and toward the Overtown area.

What led to the Thursday afternoon police decision to march down Biscayne Blvd as a closely arranged line of officers? Who ordered it? On what basis?

Based on testimony at the February 5th CIP meeting, the City of Miami Incident Commander, Deputy Chief Fernandez, was responsible for the decision to move the demonstrators with Field Forces, based on observations of demonstrator violence.

Who used less-lethal force on 11/20/04 in the area of the demonstrator clinic?

The evidence reviewed suggests that MDPD was not in that area at that time. The specific involved law enforcement agency could not be identified.

Demonstration Outside the Pre-Trial Detention Center (Jail)

On November 21, 2003, about 2 PM, there was a gathering of different protest groups in the parking lot of the State Attorney's Office (SAO), which is located across the street from the jail, to support protesters who had been arrested. It was not a permitted demonstration; however MDPD Captain James O'Donnell spoke with protest negotiators and agreed to allow a demonstration in the parking lot of the SAO, as well as a press conference at 2:30 PM. Representatives from the SAO agreed to the use of their parking lot. After the press conference about 125 demonstrators remained in the area, some walking along the sidewalk and in the street.

Captain O'Donnell agreed the demonstrators could continue to demonstrate for an hour, from 4-5:00 PM. Some time after 4 PM Major Battle, who was located in the Command Center at the American Airlines Arena (AAA), made the decision to disperse the crowd, based on intelligence reports that demonstrators were gathering rocks and were beginning to move into the street. That intelligence information was not documented in the Command Post Log. More MDPD officers, some in riot gear, began to arrive after 4 PM.

At 4:36 PM, Captain O'Donnell communicated Major Battle's decision with the demonstrator negotiators, giving the crowd three minutes to disband. According to the Command Post Log, "legal gave a 3 min warning. After this time is up—Push them back & start arresting." The negotiators agreed to call for the demonstrators to disperse, east on NW 14th Street. The announcement was made by megaphone and the crowd began to disperse.

The crowd, followed and edged by police officers, began to disperse east on 14th Street. Most of the protesters crossed NW 12th Avenue and proceeded east or north, however six activists sat down on the corner of 14th Street and 12th Avenue in an act of civil disobedience. Many camera people stopped to film the civil disobedience. Many protesters stopped as well, to see what was happening.

Minutes before 5 PM Lt. Jeff Schmidinger, who was standing on 14th Street east of 12th Avenue, gave the formal dispersal order, giving two minutes to disperse east on 14th Street. OC (Oleoresin Capsicum) "pepper" spray was deployed at 5 PM. 83 protestors were arrested, some as far away as NW 9th Avenue and 15th Street.

On March 5, 2004 the committee looked at two videos of the dispersal order given by Lt. Jeff Schmidinger and subsequent arrests made by MDPD on November 21, 2003. One video was taken by a protestor and is labeled "Ana Nogueira – November 21. 2003 – Arrest Evidence." The other was provided by MDPD.

The videos show a line of protesters facing west in the 1100 block of NW 14th Street, shouting at the officers. Lt. Schmidinger then gives a two minute dispersal order and the protesters move onto the sidewalk and begin to walk east. A short time later, a line of officers blocks the eastward movement of the protesters and the protesters appear to be forced to back up. They are surrounded by officers and told to get on the ground.

Statement of Naomi Archer

Ms Archer was one of the persons who negotiated with MDPD during the incident. She drew a diagram of the area on the chalkboard.

Ms. Archer stated that she spoke to officers stationed at the jail, the Justice Building and the SAO, informing them that protesters were present for a press conference and a peaceful vigil for demonstrators who were jailed. No one she spoke to objected. The press conference was held in the parking lot about 2:30 PM. After that some people began to walk along the sidewalk. As she was walking, Ms. Archer noticed MDPD officers in riot gear arriving and she asked Captain O'Donnell why he was escalating the situation with a "show of force." Ms. Archer stated that Captain O'Donnell had agreed to the gathering, however he broke his agreement. The officers started to form lines.

Ms. Archer said Captain O'Donnell told her "intelligence" advised that demonstrators were gathering rocks, had wrecked the bathroom in the SAO, and had filled containers with urine and feces. Ms. Archer stated that she and Captain O'Donnell agreed on a 15-20 minute frame for dispersal before officers moved in. They shook hands. Ms. Archer advised the crowd to disperse via megaphone. As activists were dispersing, Captain O'Donnell gave an official order to disperse. People continued to move away and officers started to move in, however a group of six demonstrators decided to use civil disobedience to protest by sitting on the sidewalk.

Statement of Captain O'Donnell

Captain O'Donnell stated that when he arrived on the scene about 2 PM "things were peaceful." Later the protesters moved toward the jail. His three lieutenants met with Naomi Archer and Brenna Bell, another protest negotiator, who advised that they wanted to demonstrate. Even though it was not a permitted event, MDPD set the parameters for the protest: The protestors could not come off the curb on NW 13th nor could they move south of the SAO. The time was set for one hour, from 4-5 PM. At 4:36 PM, reports from the Command Center indicated "privacy groups" were being set up, protesters had gone into the SAO and rocks were being piled up.

At 4:40 PM Captain O'Donnell advised Ms. Archer and Ms. Bell that the crowd had to disperse. He requested them to give a three-minute dispersal order and the crowd started dispersing immediately. MDPD officers followed behind.

The crowd stopped in the 1100 block of NW 14th Street, turned and took a stance. About 5 PM Lt. Schmidinger declared over the megaphone that the assembly was unlawful and gave a formal dispersal order by megaphone: the crowd had two minutes to disperse east on 14th Street. Most of the protesters followed the order, but some tried to go through a parking lot, so MDPD set up an

arrest perimeter and pushed everyone to one area to stabilize the area. People were ordered to the ground and the fence collapsed. Some protesters began to lock arms and kick their feet to avoid being arrested.

The Dispersal

Why were dispersal orders given?

MDPD observers on the ground and in a helicopter provided information that protesters were inside the SAO going through the contents of garbage cans, “privacy groups” were being set up, and rocks were being piled up. Major Battle said both the protest negotiators and the police were beginning to lose control of the crowd.

What technology was used to assure calls to disperse were heard?

Both police and/or demonstrators used megaphones, or bullhorn amplifiers. The dispersal orders east of 12th Avenue were clearly heard on videotape supplied by MDPD and protesters.

Did orders to disperse follow established guidelines? What are those guidelines?

A sample dispersal order from a document entitled “Field Force and Task Force Commander’s Handout” reads, in part, as follows: “The following routes of dispersal are available and give the most expeditious routes of dispersal. You have (a reasonable amount of time) minutes to disperse.”

Major Battle stated that the normal time frame is 5-10 minutes; however the situation on November 21 was becoming urgent. There were reports that protesters were gathering rocks. The crowd was starting to move into the street. Five o’clock traffic was building. Major Battle made the decision to disperse the crowd. Captain O’Donnell, after consultation with the MDPD legal advisors, decided on the initial three-minute time frame, Lt. Schmidinger used a two minute time frame. Bob Knabe and Bill Monahan were the MDPD legal advisors on the scene.

What dispersal orders were given?

There appear to be two agreements made between the police and the negotiators. The initial agreement to have a vigil and a “First Amendment Zone” in the parking lot of the SAO around 2:30 PM. The second agreement, made after Major Battle made the decision to disperse, was for the negotiators to announce the dispersal decision around 4:36 PM.

About 5 PM Lt. Schmidinger gave another dispersal order from 14th St. east of 12th Ave., in which he directed protesters to get out of the street and disperse east on 14th Street in two minutes. After awhile, Lt. Schmidinger got back on the bullhorn and advised they had 90 seconds remaining.

What is expected to happen by the dispersal deadline?

Captain O’Donnell at first said he expected the protesters to be gone. Later he acknowledged the expectation that demonstrators would begin to disperse.

Was the dispersal time reasonable?

Mr. Feldman, Miami CRB, stated many were trying to disperse and he questioned the reasonableness of the time frames. He does not believe sufficient time was given. The video provided by MDPD shows arrests of people who had begun moving east on 14th Avenue before the two minutes were up.

Who was subject to arrest after the dispersal orders?

Major Battle stated that: “Everybody would be subject to arrest once they violated the order to disperse...but, the arrestees would have been the ones that were most likely obstructing traffic, or continuing to resist the police and not move. The ones that were on the sidewalk and moving along the pre-determined route, had they not been causing something else to warrant their arrest, would not have been arrested.”

According to the police, some demonstrators complied; others violated the dispersal order by turning north or south on 12th Avenue. The Use of Force Report also indicates that orders to “stop resisting arrest” were ignored.

Mr. Guilfoyle explained that anyone who does not comply with the order of a police officer can be charged with “resisting arrest without violence.”

Less-Lethal Weapons

What less-lethal weapons were deployed?

On November 21, 2003, one officer deployed three pepper balls and another deployed a canister of OC spray. Mr. Guilfoyle stated that on Friday afternoon, pepper balls were used against one individual that grabbed an officer’s shield and the OC spray dispensed against two demonstrators. Mr. Guilfoyle stated that a Use of Force Report should have been written regarding the pepper balls, but was not.

Who fired less-lethal weapons?

One MDPD Supervisor’s Report of Use of Force To Control, regarding the use of less-lethal weapons, was generated during FTAA week, and one five month later. The 11/21/03 report documents that Sergeant Carlos Acin deployed a canister of “OC (Oleoresin Capsicum) Spray” against two females, Angela Drobnica and Laura Ripple, “to facilitate compliance so the officers could effect the arrest without injury to the protesters of officers.” Sergeant Acin wrote the report pertaining to his own actions.

The report dated 4/0/04 documents that Officer Christopher Fabian deployed “approximately three pepperball rounds” at an unknown subject who attempted to grab the officer’s shield.

Were the less-lethal weapons deployed according to policy?

Dr. Diaz read the MDPD Use of Non Lethal Weapons SOP. Major Battle stated that he believes there is a later version. (Mr. Guilfoyle subsequently provided the newer policy, specific to projectile “Munitions”, dated October 2, 2003 and approved 10/29/03. Both the SOP and the newer policy call for a Supervisor’s Report of Use of Force To Control to be generated upon any use.)

The SOP states that “The actual deployment and use of Less-Lethal Munitions will be authorized by the Task Force or the MFF [Mobile field Force] Commander at the scene of a MFF operation.” MDPD testimony is that Sergeant Acin, who was in possession of the OC canister had the authority to make the independent judgment as to when to deploy the canister. However, the reported deployment of the pepper spray canister occurred without exhausting “all other reasonable efforts to control”, given the overwhelming police presence and the close proximity of non-resisting demonstrators that were unnecessarily contaminated.

What were the justifications to fire at people who were fleeing/dispersing?

The evidence does not show that the pepper spray or pepper balls were used against persons who were actively dispersing. The video shows Sergeant Acin spraying demonstrators after officers told them to get on the ground and some had their arms interlocked.

Arrests

What led to the arrests?

Mr. Steier stated that the police encircled the demonstrators and cut them off before the allotted dispersal time. Lt. Schmidinger testified in the trial for Gan Golan that he sent his field forces to begin arrests “approximately one minute and 45 seconds” after the two-minute dispersal order because the crowd “made the overt act to charge back and go west.”

Captain O’Donnell said the protesters moved onto the sidewalk but did not disperse. They stopped; it was an unlawful assembly. The assembly became unlawful when Lt. Schmidinger declared it unlawful. The decision to send an arrest team was made when the crowd, which had been dispersing east, turned and moved west.

Rev. Sims stated that he arrived after the protesters had moved east of 12th Avenue and he observed a lot of intimidation from the protesters toward the police. Some demonstrators defied the order to disperse. Protesters on the northwest side of the building “rushed back toward the police.” Rev. Sims stated they were not rushing the police, but rather trying to rush past the police back to 12th Avenue. Rev. Sims stated that it seemed like everybody had press credentials and cameras, and those with cameras remained standing when the police told everyone to get down on the ground.

83 people were arrested. Most were arrested in the 1100 block of NW 14th St., however some protesters were arrested on 9th Ave. and 15th St. by bicycle officers.

What evidence is there that protesters were gathering rocks on Friday afternoon outside the jail?

MDPD provided the following evidence:

- Affidavits from three police “observers” stationed in the Cedars Parking Garage, attested to two males collecting rocks. One put them in a box and another a yellow plastic bag.
- Pictures of one man with a box.
- Pictures of rocks, bricks and a gas can found on the ground after the fact.

There is no record that weapons were taken from any demonstrator’s person.

Was excessive use of force used?

The preponderance of the evidence supports the conclusion that the reported utilization of Non-lethal weapons was an unnecessary use of force. The utilization of arrest powers upon demonstrators that were attempting to disperse within a very tight time frame was also an unnecessary use of force.

What Policy and/or procedure need to change?

The evidence does not support a conclusion of policy failure or inadequacy. Implementation of dispersal order policy was a problem at times in that it can be perceived to have been “lawful but awful” to give two minutes for a crowd to disperse. Procedural violations regarding less than lethal weapons deployment should be addressed.

From the Audience

Rev. Dr. Donna Schaper (Senior Pastor at the Coral Gables Congregational Church) testified regarding two specific occasions. The first was Tuesday evening, November 18th. Dr. Schaper was the opening speaker an ecumenical worship was scheduled for 7 PM at First United Methodist Church downtown. Dr. Schaper stated that “dozens of men in riot gear” blocked all access to the area of the church. “Hundreds” of people were turned away by the police. She was finally able to get to the church at 8:50 PM. Dr. Schaper said she was deeply offended by police in riot gear that early. Dr. Schaper believes that the police violated a promise not to put on the riot gear until Thursday. Dr. Schaper also believes that officials confused protestors and terrorists; and they confused closing down the city with security. She stated that wearing riot gear when there is no riot is provocative and intimidating.

The second occasion was November 20th. Dr. Schaper stated she was downtown from 10 AM to 4 PM on and personally saw no demonstrators throw anything at police. However she did see police push demonstrators, around 3 PM at the Burger King near the Wolfson Campus. About 3:55 PM she felt the tension rising and decided to leave, however she could not get out because the College Metromover Station was closed.

Nikki Hartman submitted a videotape labeled “Ana Nogueira – November 21, 2003 – Arrest Evidence.” Ms. Hartman stated she would provide the Panel with an article from Laura Ripple, a protester who had her pepper spray contaminated clothes cut off by four male officers.

Naomi Fisher stated that on Saturday, 11/22/04, at about 5 PM, she was driving north on North Miami Avenue when she came behind a group of bicycle officers wearing white shirts and blue shorts. She heard the officers make crude sexual remarks to three young people who were walking down the street. The officers turned onto 23rd Street where the convergence center was located, and made similar remarks to people standing around the center. Ms. Fisher said she would provide the Panel with photographs taken during the incident. Mr. Reynardus responded that the locations and uniform descriptions suggest they were Miami police officers.

Ada Rojas (Miami Community Relations Board) testified that she was not present during the demonstration outside the jail. At that time she was in charge of a permitted event at the Miami Arena where approximately 200 people demonstrated peacefully from 10 AM to 4:30 PM.

Noel Cleland inquired whether the orders to disperse and get on the ground applied to the media. Mr. Guilfoyle replied that they did.

Deborah Dion, (AFL-CIO) asked who in the command center made the decision to block the union busses. She was advised that labors concerns are scheduled for review at a later date.

Erick Morris stated that he was one of 14-15 who were obeying the dispersal order when they were arrested by MDPD "riot police on bicycles" who took pictures with personal cameras.

Jeffrey Keating (Free Speech TV) stated that he was another negotiator during the jail incident; there were about four negotiators.